# Office of Chief Counsel Internal Revenue Service

# memorandum

CC:LM:CTM:LN:POSTF-162595-01 Shwang

date: DEC 1.9 2001

from: Sandy Hwang, Attorney
Joyce M. Marr, Senior Attorney

June Y. Bass, Associate Area Counsel (LMSB)

subject: (E.I.N. (E.I.N.) and Subsidiary Waiver of Statute of Limitation for the Consolidated Group under Treas. Reg. § 1.1502-77

Statute Expires December 31,

## DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

This is in response to your request for advice received on November 16, 2001. This memorandum should not be cited as precedent.

#### ISSUE

Who is the proper party to sign the Form 872 for the taxable year ended for and Subsidiary?

## CONCLUSION

When				Ind	c. (fo	rmerly	known	as
		. and for	merly a	a subsid	diary	of		
	Inc.) merg					, Inc.,	, it	
succeeded	to the sev	eral liab	oility o	of			<b>.</b> .	Inc
for the co	nsolidated	tax liab	oility o	of the				,
Inc. conso	lidated gr	oup for t	he taxa	able yea	ar end	led 💮		
. Thu	s,			,	Inc.	is the	prope:	r
party to s	ign the Fo	rm 872 fc	or the t	caxable	year	ended		

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for				, 1	inc.	and	Subsidi	iary.	
The	caption	on th	ne Form	n 872	2 sh	ould	read as	s follo	ws:
							(E.I.N.		
	), fo	ormer.	ly <b>——</b>				, Inc.	(a Dela	ware
corp	oration,	), suc	ccessoi	: to				Inc.	(a
	corpo	ora <u>ti</u>	on), si	<u>ic</u> ces	ssor	to			
Tnc				) *					

We recommend that at the bottom of page the following language be set forth including the asterisk: \*This is with respect to the consolidated tax liability of the (E.I.N.: and Subsidiary consolidated return group for the taxable year ended ...

In addition, the signature block on page 2 of the Form 872 should be signed as follows:

, formerly , Inc. (a Delaware corporation), successor to Inc. (a corporation), successor to Inc. (a corporation), successor

The block should be signed by a current officer of , Inc.

Additionally, since the requirements of I.R.C. \$ 6501(c)(4)(B), pertaining to giving the taxpayer notification of certain rights, must be satisfied, please ensure that the statute extension is requested by the most recent revision of Form Letter 907 or 976.

## FACTS1

was acquired on by Inc. ("Taxpayer") (E.I.N. ). The Taxpayer filed a consolidated return with for the initial return period through through The Service wants to obtain an extension or waiver for the statute of limitation for assessment for the taxable year ended

Our advice is contingent on the accuracy of the information which you have supplied. If you uncover any information inconsistent with the facts recited in this memorandum, you should not rely on this memorandum, and you should seek further advice from this office.

On			acquired			
shares of the	e Taxpayer's s	tock for	cash in a	taxabl <u>e</u>	purchase	
	, the					
downstream me	erger and	was the s	urviving $\epsilon$	entity af	ter the	
merger.2 The	next day, in	a transa	ction that	qual <u>ifi</u>	ed under	
	(a)(1)(F) as a				changed	its
name to			, Inc. ("		<b>"</b> )	and
changed its :	state of incor	porat <u>ion</u>	from	to Del	aware.	
	continues to					
number	. Subseq	uently,	V	as acqui	red by	
	in a stock pu	rchase.				

Exam states that it can get an extension from , and/or but does not know which entity should sign the consent to extend or waive the statute of limitations for assessment on behalf of the Taxpayer.

## Analysis

In general, the common parent is the sole agent for each member of the group for all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77. Moreover, the common parent is generally the proper party to sign consents and receive all correspondence. Treas. Reg. §1.1502-77(a). However, each member of the group is severally liable for the entire tax of the group. Treas. Reg. §1.1502-6(a).

In this case, the common parent of the common paren

When state law so provides, the successor in interest is primarily liable for the debts and obligations of the absorbed corporation. Phillips v. Lyman H. Howe Films Co., 33 F.2d 891, 892 (3d Cir. 1929). The party that is liable for the debts of the merged corporation is the one that must sign the waiver of the statute of limitations on behalf of the merged corporation. See Gott v. Live Poultry Transit Co., 17 Del. Ch. 288, 152 Atl. 801 (1931). When state law provides for primary liability of a surviving corporation after a statutory merger, the surviving corporation should sign the consent to extend the statute of

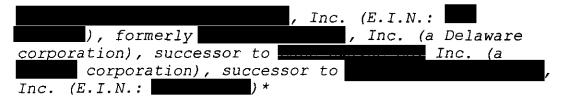
<sup>&</sup>lt;sup>2</sup> Exam has not been able to obtain details of the merger nor has this office through public records.

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limitations as "Surviving Corporation, successor in interest to predecessor corporation." Primary Liability and Transferee Liability of Successor Corporation, G.C.M. 34,970, I-4092 (July 31, 1972).

The Office of Chief Counsel has found that every state, with which it has dealt, has a statute making the successor corporation in a merger liable for all debts and liabilities of the disappearing corporation. Furthermore, it believes that even if there existed a state that did not have such a statute, the state common law would impose such liability on the successor in a merger. Thus, formerly succeeded to the several liability of for the consolidated tax liability of consolidated group for the taxable year ended the form 872 for the consolidated tax liability of Holdings consolidated group for the year at issue.

The caption of the Form 872 should read as follows:



We recommend that at the bottom of page the following language be set forth including the asterisk: \*This is with respect to the consolidated tax liability of , Inc. (E.I.N.: ) and Subsidiary consolidated return group for the taxable year ended ...

In addition, the signature block on page 2 of the Form 872 should be signed as follows:

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, Inc., formerly
, Inc., formerly
, Inc. (a Delaware corporation), successor to

Inc. (a corporation), successor
to , Inc.*
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This memorandum was pre-reviewed by our National Office pursuant to the NSAR procedures. If you have any questions, contact attorney Sandy Hwang at (949)360-3432.